No. 76-678

Supreme Court, U. S.
SEP 23 1977
MICHAEL RODAK

In the Supreme Court of the United States

OCTOBER TERM, 1977

SHELL OIL COMPANY, PETITIONER

v.

ANNE M. DARTT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AMICUS CURIAE

WADE H. MCCREE, JR.,
Solicitor General,
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Washington, D.C. 20210.

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The Solicitor General on behalf of the United States moves for leave to file a brief as *amicus curiae* after the time specified by Rule 42(2). Cf. Rule 42(4).

1. This case presents an important question concerning the notice requirement pertaining to private actions brought under the Age Discrimination in Employment Act (ADEA), 81 Stat. 602, as amended, 29 U.S.C. 621 *et seq*. The issue is of particular concern to the Secretary of Labor who is charged with a variety of enforcement responsibilities under the Act, and to the Equal Employment Opportunity Commission because similar questions may arise under Title VII of the Civil Rights Act of 1964, 78 Stat. 753, as amended, 42 U.S.C. 2000e *et seq*. The interest of the United States is more fully described at pages 3-5 of the brief that is now lodged with the Clerk.

2. Petitioner's brief was served on the government on May 10, 1977. Initial responsibility for drafting this brief was assigned by the Solicitor General on May 11, 1977, to the Fair Labor Standards Division of the Office of the Solicitor or Labor, which has responsibility for appellate litigation under the ADEA. That office had previously been notified on February 24, 1977, of this Court's grant of certiorari on February 22, 1977, and of its assignment to prepare a draft brief as *amicus curiae*. In the last several months, that office has experienced unusually severe staff shortages and temporary workload increases that unavoidably delayed completion of an adequate presentation of the position of the United States. For most of that time, two appellate supervisory positions were vacant, in addition to the Associate Solicitor's position which is normally charged with the direction of Supreme Court litigation. A number of other legal positions in the appellate staff also remained unfilled for considerable periods. Moreover, congressional committees at the same time were highly active, and the Fair Labor Standards Division was charged with substantial research and consulting responsibilities in connection with the testimony of Department officials and with the drafting of language for proposed amendments to the Fair Labor Standards Act and the Age Discrimination in Employment Act.

3. Because of the limited discussion of the issues in the brief submitted by respondent, and because the implications of those issues extend beyond the direct interests of the Secretary, it was necessary for the office of the Solicitor of Labor to develop and revise several drafts of the brief to reflect the concerns of the Equal Employment Opportunity Commission, the office of the Solicitor General, and the Department of Labor. A draft brief was submitted to the Solicitor General on August

18, 1977. Review and revision of the brief in the office of the Solicitor General entailed consultation between the three offices concerning the legislative history of the provisions in question and similar provisions of Title VII. Final preparation and printing of the brief were further delayed because of the heavy volume of other briefs in this Court under simultaneous preparation, and particularly the need to give priority to briefs in cases scheduled for October argument or for the Court's opening conferences, and to petitions and jurisdictional statements.

4. Since the Court has not yet set this case for oral argument, there remains an adequate opportunity for the petitioner and respondent to take into account the position of the United States in the further presentation of their cases and to file any reply they may wish to the views expressed in our brief. The United States therefore requests that it be permitted to file a brief as *amicus curiae* at this time.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

CARIN ANN CLAUSS,
Solicitor of Labor,
Department of Labor.

SEPTEMBER 1977.

DOJ-1977-09